

Appendix E

ES&S Responses to RFI Items

1.5 Project Scope

As mandated by HAVA and the New York State Election Reform and Modernization Act of 2005 (ERMA), the project is focused on the implementation of a new voting system and processes in the City of New York for the 2009 Primary and General elections and beyond. There are 1,370 polling sites located throughout NYC's five (5) boroughs serving 64 Assembly Districts and 6,100 Election Districts. They serve 4.3 million registered voters. In total, this project will provide for the replacement of 7,700 lever voting machines currently in use. A full listing of volumetric information can be found in Appendix B of this RFI. As part of the proposal, Proposer must recommend all hardware, software, services, accessories and consumables required to fully implement their proposal to efficiently conduct elections in the City of New York.

Further, the proposed voting system shall meet all requirements of Federal and State law that address accessibility of voting systems. These laws include:

1. The Help America Vote Act (HAVA) of 2002
2. The Americans with Disabilities Act (ADA) of 1990
3. The Federal Rehabilitation Act
4. The Voting Rights Act of 1965
5. New York State Election Law
6. Election Assistance Commission's 2005 Voluntary Voting System Guidelines
7. New York State Board of Elections Rules and Regulations

These rules and regulations apply not only to assistive voting devices, but also to the capabilities of other components of the proposed voting system such as the election management system (EMS) and the pollsite voting system. The respondent, in submitting a proposal, shall acknowledge explicitly that its proposed software, hardware, and firmware are all in compliance with the relevant accessibility portions of these laws and that the vendor will maintain this compliance at no additional cost to the Board of Elections in the City of New York or to the State of New York.

ES&S RESPONSE

During the warranty period and thereafter so long as the City has paid for and is receiving ES&S Hardware Maintenance Services and ES&S Software Maintenance and Support Services, the equipment and licensed software shall be maintained or upgraded by ES&S in such a way as to remain compliant with all applicable state election laws and regulations related to accessibility, including all current and future requirements necessary to remain certified for use in the State of New York. "Maintained or upgraded" shall mean only such changes to individual items of the licensed software (but not equipment) as are technologically feasible and commercially reasonable in ES&S' discretion. The City shall be responsible for the cost of all replacements, retrofits or modifications to the ES&S equipment that may be developed and offered by ES&S in order for such ES&S equipment to remain compliant with applicable laws and regulations. City shall also be responsible for (i) the cost of any third party items that ES&S notifies City are hereinafter required in order for the equipment and licensed software to remain compliant and certified, and (ii) City's pro-rata share of the costs of any future state

certifications or recertifications and any mandated modifications to the equipment and/or licensed software that may result therefrom that are not otherwise required as a result of any changes or modifications voluntarily made by ES&S to the licensed software or equipment licensed and sold hereunder. City's pro-rata share of such certification or recertification costs and any mandated modifications to the equipment and/or licensed software that may result therefrom shall be determined at the time by dividing the number of registered voters in the City's jurisdiction by the total number of registered voters in all New York cities and counties to which ES&S has sold and/or licensed the equipment and licensed software purchased and licensed by the City.

1.6 Statement of Work

1.61 Proposer Project Tasks

The implementation of the proposed voting system for BOE in NYC for the 2009 elections shall include the following tasks:

2) Provide Software and Hardware Modifications – Make modifications needed to meet BOE in NYC requirements to the Proposer's Voting System including modifications discovered during implementation, acceptance testing, or interface development process.

ES&S RESPONSE

A stated above, during the warranty period and thereafter so long as the City has paid for and is receiving ES&S Hardware Maintenance Services and ES&S Software Maintenance and Support Services, the equipment and licensed software shall be maintained or upgraded by ES&S in such a way as to remain compliant with all applicable state election laws and regulations related to accessibility, including all current and future requirements necessary to remain certified for use in the State of New York. "Maintained or upgraded" shall mean only such changes to individual items of the licensed software (but not equipment) as are technologically feasible and commercially reasonable in ES&S' discretion. The City shall be responsible for the cost of all replacements, retrofits or modifications to the ES&S equipment that may be developed and offered by ES&S in order for such ES&S equipment to remain compliant with applicable laws and regulations. City shall also be responsible for (i) the cost of any third party items that ES&S notifies City are hereinafter required in order for the equipment and licensed software to remain compliant and certified, and (ii) City's pro-rata share of the costs of any future state certifications or recertifications and any mandated modifications to the equipment and/or licensed software that may result therefrom that are not otherwise required as a result of any changes or modifications voluntarily made by ES&S to the licensed software or equipment licensed and sold hereunder.

Custom programming or enhancements to ES&S' proprietary software are available to the City. Upon ES&S' receipt of a software enhancement request from the City, ES&S will review the enhancement request and determine if ES&S will develop such enhancement. Upon ES&S' determination that such enhancement will be developed, ES&S will meet with the City to outline the estimated cost and payment terms to provide the requested enhancement. In addition, ES&S will outline to the City the proposed timeframes necessary for the design, development, testing, certification, delivery and implementation of the requested enhancement. Upon the City's acceptance of the terms set forth by ES&S, ES&S will provide the requested enhancement on a schedule determined by ES&S.